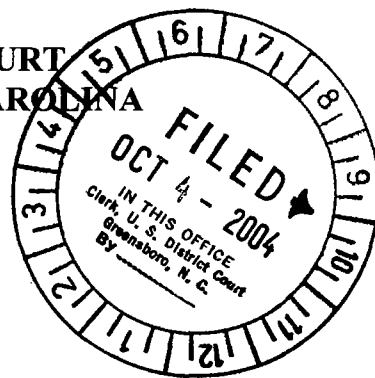


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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



SAMUEL RUSSELL FLIPPEN,

Petitioner,

v.

MARVIN POLK, Warden,  
Central Prison, Raleigh, North Carolina,

Respondent.

1:01CV00674

**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

This matter comes before the Court on the "Application for Certificate of Appealability" filed by Petitioner Samuel Russell Flippen on September 17, 2004. (Pleading No. 39.) Respondent Marvin Polk, Warden<sup>1</sup>, has responded in opposition. The application is ready for a ruling.

On June 8, 2004, United States District Judge James A. Beaty, Jr. entered Judgment in this matter, denying Petitioner's petition for a writ of habeas corpus. Petitioner has now applied for a certificate of appealability as to a number of claims raised in the petition. Specifically, Petitioner seeks a certificate as to Claims I.B.1, I.B.2, I.B.3, I.B.5, I.C.1, I.C.3, I.C.4, I.D, and IV.

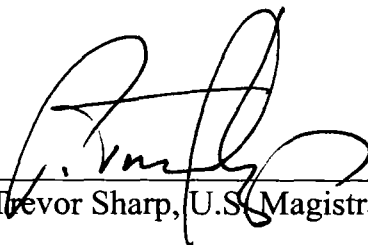
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<sup>1</sup> Marvin Polk succeeded Mr. R. C. Lee as Warden at Central Prison. The caption is hereby amended to accurately reflect Mr. Polk as the Respondent.

A district court may issue a certificate to appealability from a habeas corpus adjudication against the petitioner only if the petitioner can show that “the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). In *Slack v. McDaniel*, 529 U.S. 473 (2000), the Supreme Court determined that, in order to obtain a certificate of appealability, a petitioner must show that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Id.* at 483-84 (citation omitted.)

Applying this standard to the case at bar, the Court finds that a certificate of appealability should be denied as to all of the claims presented. The Court hereby incorporates the analyses set out in detail as to the claims in question in the Recommendation filed March 9, 2004. The Court does not believe that reasonable jurists could debate the proper resolution of the procedural or substantive issues determined by the Court, or that Petitioner’s claims are adequate to deserve encouragement to proceed further.

Accordingly, **IT IS RECOMMENDED** that Petitioner’s application for a certificate of appealability be denied. (Pleading No. 39.)

  
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P. Trevor Sharp, U.S. Magistrate Judge

October 4, 2004